

REMARKS

Applicants respectfully submit the arguments herein traverse the outstanding rejections and objection and respectfully asks the Examiner to reconsider and withdraw them. Claims 1-2, 5-13 and 16-20 currently stand rejected under 35 U.S.C. § 103(a). Claims 3-4 and 14-15 are currently objected to, but are indicated as having allowable subject matter.

Objections to Claims 3-4 and 14-15

The current action states that claims 3-4 and 14-15 contain allowable subject matter and would be allowable if rewritten to overcome the 35 U.S.C. § 112, second paragraph rejections set forth in the current office action. Applicant's attorney (Richard Martin) had a phone conversation with Examiner Kenneth Tang on November 11, 2005, in which the Examiner stated that there were no pending § 112 objections in the current office action. Applicant thanks the Examiner for clarifying the status of the § 112 rejections, and for the indication of allowability of the subject matter of claims 3-4 and 14-15.

Rejections under 35 U.S.C § 103(a)

Claims 1-2, 5-13, and 16-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Steere et al (hereinafter, Steere) ("A Feedback-driven Proportion Allocator for Real-Rate Scheduling") in view of U.S. Patent No. 5,675,739 (hereinafter, Eilert).

In order for a claim to be rejected under 35 U.S.C. § 103, the Examiner must establish a *prima facie* case of obviousness. "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations." M.P.E.P. § 2143. Applicant respectfully asserts that the rejection of record does not satisfy these requirements.

Lack of Motivation

The Examiner states that “it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Eilert with Steere because this would allow goals to be achieved according to the user. Office action, Page 3. However, there can be no motivation to combine references, and “it is improper to combine references where the references teach away from their combination.” M.P.E.P. § 2145(X)(D)(2) (citing *In re Grasselli*, 713 F.2d 731, 734 (Fed. Cir. 1983). Steere teaches a system that “can assign the appropriate proportion and period to a job’s thread(s), alleviating the need for input from human experts.” Steere, Page 1, Column 2. Steere’s invention was designed to determine the appropriate proportion and period without any human input. However, Eilert’s invention needs human input because it is designed to allocate system resources in order to achieve end-user goals. Column 1, Lines 62-67. Thus, Steere teaches away from the Examiner’s combination of Steere with Eilert. Moreover, because Steere specifically teaches away from its combination with Eilert, there can be no motivation for one skilled in the art to make the combination. Therefore, the Examiner fails to establish a *prima facie* case of obviousness as is necessary for a proper rejection under 35 U.S.C. §103. Accordingly, Applicant respectfully request withdrawal of the 35 U.S.C. §103 rejection of record.

Claim 1

Independent claim 1 recites “a calculator that determines an allocation request value using a proportional factor, an integral factor, and a derivative factor, wherein the factors are calculated from the at least one user-defined goal and the performance information.” Although Steere does describe that the “individual progress pressures are then summed and passed to a . . . PID control to calculate a cumulative pressure,” there is no mention of factors being calculated from the at least one user-defined goal. Steere, Page 6, Column 2. The Examiner admits that Steere does not disclose this limitation, then cites to Eilert. Office action, Page 3. However, Eilert does not disclose that “[proportional, integral, and derivative] factors are calculated from the at least one user-defined goal and the performance information.” The cited passage, in Eilert, merely discusses that the invention allows “managing the performance of a work-load . . . according to end-user oriented goals.” Eilert,

Column 1, Lines 62-67. In fact, the invention of Eilert sets up performance classes according to the goals that are represented by a class table entry, and then calculates a performance index which is described as actual response time divided by the goal response time. Eilert, Column 3, Line 47-Column 4, Line 47. However, there is no disclosure of the goals being used as part of the calculation of the factors as required by the present invention. Thus, the combination of Eilert and Steere does not teach or suggest that “the [proportional, integral, and derivative] factors are calculated from the at least one user-defined goal and the performance information.” Therefore, the combination does not teach or suggest all of the claim limitations as required for a proper rejection under 35 U.S.C. § 103(a). Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection of record.

Claims 2 and 5-11

While claims 2 and 5-11 contain subject matter that allows them to stand on their own, they also depend either directly or indirectly from, and inherit all of the limitations of independent claim 1, shown above to be allowable over the applied art. Therefore, claims 2 and 5-11 are asserted to be allowable, at least, because of their dependence from claim 1.

Claim 12

Independent claim 12 recites “code for determining an allocation request value using a proportional factor, an integral factor, and a derivative factor, wherein the factors are calculated from the at least one user-defined goal and the performance information.” A Although Steere does describe that the “individual progress pressures are then summed and passed to a . . . PID control to calculate a cumulative pressure,” there is no mention of factors being calculated from the at least one user-defined goal. Steere, Page 6, Column 2. The Examiner admits that Steere does not disclose this limitation, then cites to Eilert. Office action, Page 3. However, Eilert does not disclose that “the [proportional, integral, and derivative] factors are calculated from the at least one user-defined goal and the performance information.” The cited passage, in Eilert, merely discusses that the invention allows “managing the performance of a work-load . . . according to end-user oriented goals.” Eilert, Column 1, Lines 62-67. In fact, the invention of Eilert sets up performance classes according to the goals that are represented by a class table entry, and then calculates a performance

index which is described as actual response time divided by the goal response time. Eilert, Column 3, Line 47-Column 4, Line 47. However, there is no disclosure of the goals being used as part of the calculation of the factors as required by the present invention. Thus, the combination of Eilert and Steere does not teach or suggest that “the [proportional, integral, and derivative] factors are calculated from the at least one user-defined goal and the performance information.” Therefore, the combination does not teach or suggest all of the claim limitations as required for a proper rejection under 35 U.S.C. § 103(a). Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection of record.

Claims 13 and 16-17

While claims 13 and 16-17 contain subject matter that allows them to stand on their own, they also depend either directly or indirectly from, and inherit all of the limitations of independent claim 12, shown above to be allowable over the applied art. Therefore, claims 13 and 16-17 are asserted to allowable, at least, because of their dependence from claim 12.

Claim 18

Independent claim 18 recites “determining an allocation request value using a proportional factor, an integral factor, and a derivative factor, wherein the factors are calculated from the at least one user-defined goal and the performance information.” Although Steere does describe that the “individual progress pressures are then summed and passed to a . . . PID control to calculate a cumulative pressure,” there is no mention of factors being calculated from the at least one user-defined goal. Steere, Page 6, Column 2. The Examiner admits that Steere does not disclose this limitation, then cites to Eilert. Office action, Page 3. However, Eilert does not disclose that “the [proportional, integral, and derivative] factors are calculated from the at least one user-defined goal and the performance information.” The cited passage, in Eilert, merely discusses that the invention allows “managing the performance of a work-load . . . according to end-user oriented goals.” Eilert, Column 1, Lines 62-67. In fact, the invention of Eilert sets up performance classes according to the goals that are represented by a class table entry, and then calculates a performance index which is described as actual response time divided by the goal response time. Eilert, Column 3, Line 47-Column 4, Line 47. However, there is no disclosure of the goals being

used as part of the calculation of the factors as required by the present invention. Thus, the combination of Eilert and Steere does not teach or suggest that “the [proportional, integral, and derivative] factors are calculated from the at least one user-defined goal and the performance information.” Therefore, the combination does not teach or suggest all of the claim limitations as require for a proper rejection under 35 U.S.C. § 103(a). Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection of record.

Claims 19-20

While claims 19-20 contain subject matter that allows them to stand on their own, they also depend either directly or indirectly from, and inherit all of the limitations of independent claim 18, shown above to be allowable over the applied art. Therefore, claims 19-20 are asserted to allowable, at least, because of their dependence from claim 18.

Conclusion

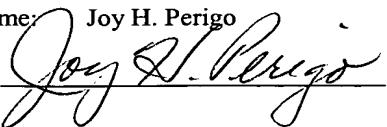
In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 08-2025, under Order No. 10992091-1 from which the undersigned is authorized to draw.

I hereby certify that this correspondence is being deposited with the United States Postal Service as Express Mail, Label No. EV482726155US in an envelope addressed to: MS AF, Commissioner for Patents, P O Box 1450, Alexandria, VA 22313-1450.

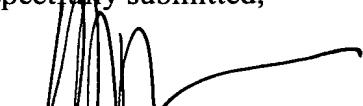
Date of Deposit: 12-06-2005

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Respectfully submitted,

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